

REMARKS

Withdrawal from consideration of claims 8-10, 12, 13, 15-22, 28-33, 38 and 39 is noted.

Claims 1-4 and 25-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chin '477 in view of Chin et al WO '831. This rejection is respectfully traversed with respect to these claims as amended herein.

These claims now specifically recite “a method of performing a cardiac procedure using a rigid endoscopic cannula having a transparent distal tip and at least one access port extending to an open distal end,” and “advancing the tip of said endoscopic cannula through tissue to the pericardium under endoscopic visualization through the tip,” and “advancing a surgical instrument beyond the distal tip through said at least one access port and the open distal end thereof.”

In addition, the dependent claims are further restricted by various recitations of “forming an opening in the pericardium under endoscopic visualization through the tip for the advancement of said endoscopic cannula into the pericardium,” or “said opening in the pericardium is formed by manipulating an entry instrument through the at least one access port and beyond the distal end thereof,” or “gripping a flap of the pericardium under endoscopic visualization using the entry instrument introduced through the at least one access port of the endoscopic cannula and extended beyond the open distal end thereof.”

These aspects of the claimed invention greatly facilitate cardiac surgery without direct viewing and without having to remove or otherwise reconfigure the tissue-dissecting tip.

These aspects of the claimed invention are not disclosed or even suggested by the references considered either alone or in the combination proposed by the Examiner. Specifically, Chin '477 discloses subxiphoid entry into the chest utilizing direct vision for performing a surgical procedure on the heart of a patient. However, as the Examiner acknowledges, there is no disclosure in this reference of any endoscopic visualization of the procedure, and certainly no disclosure of the specific claimed procedure of "advancing the tip of said endoscopic cannula through tissue to the pericardium under endoscopic visualization through the tip."

And, Chin et al WO 97/23831 discloses a cannula and procedure for performing vessel harvesting in which the tip is removed from the cannula (after protruding back out of the body through another incision) in order to provide access to another surgical instrument (e.g., Figure 9B). Thus, there is no disclosure in this reference of the specific procedural step of "advancing a surgical instrument beyond the distal tip through said at least one access port and the open distal end thereof." Therefore, merely combining these references in the manner proposed by the Examiner would, at best, modify directly-viewed cardiac surgery, using a *vein harvesting instrument* and procedure without a distal viewing tip in place in order

to advance a surgical instrument beyond such distal tip. This combination of references is inconsistent with the disclosed respective purposes of the references, is without any motivation, instruction or incentive for such combination as found in the references, and nevertheless fails to establish even *prima facie* basis from which a proper determination of obviousness under 35 U.S.C. § 103(a) can be derived. It is therefore respectfully submitted that amended claims 1-4 and 25-27 are now patentably distinguishable over the cited art.

Claims 5, 11, 23 and 24 have been rejected as being unpatentable under 35 U.S.C. § 103(a) over Chin '477 in view of Chin et al WO '831, as above, variously further in view of de Feyter et al. on Vaska et al. '605. These rejections are respectfully traversed.

These dependent claims are further restricted over their respective predecessor claims 1, 2 as now amended herein, and are submitted to be allowable at least for the same reasons as stated in the above Remarks regarding the claims from which they depend.

Claims 6 and 34-37 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Chin '477 in view of Chin et al WO '831, as above, further in view of Hildwein et al '156. This rejection is respectfully traversed.

Independent claim 34 specifically recites "a rigid endoscopic cannula having a laterally expandable sheath overlying the endoscopic cannula" and "inserting the

rigid endoscopic cannula with the expandable sheath into the incision; advancing the endoscopic cannula through tissue under endoscopic visualization to form a passage of dissected tissue between the incision and the pericardium; and laterally expanding the sheath within the passage passing the endoscopic cannula through the expandable sheath to form a working cavity in dilated tissue along the passage.”

In addition, the dependent claims 6, 35-37 are further limited over the predecessor claims by various recitations of laterally expanding the passage or the sheath within the passage.

These aspects of the claimed invention are not disclosed or even suggested by the cited references considered either alone or in the combination proposed by the Examiner. Specifically, the deficient disclosures of Chin ‘477 and Chin et al WO ‘831 are discussed in the above Remarks. And, contrary to the Examiner’s analyses of Hildwein et al ‘156, this reference is not understood to disclose a laterally-expandable sheath or the defined procedure performed with the expandable sheath under endoscopic visualization. At best, Hildwein et al ‘156 appears to disclose a flexible trocar tube or cannula 120, 122 that is movable angularly about a normal to the plane of the flange (per Figs. 16 A, B referenced by the Examiner), but not to disclose a sheath or a procedure for its use as claimed

by Applicant. It is therefore respectfully submitted that amended claims 6, 34-37 are now patentably distinguishable over the cited art.

Entry of this amendment, which is submitted to place this application in condition for allowance, is respectfully requested. In the event the Examiner decides to continue the rejections of claims, it is requested that this amendment be entered to clarify the issues for appeal.

The Examiner is requested to contact the undersigned attorney for the Applicant regarding any remaining issues that may expedite favorable disposition of this application.

Respectfully submitted,
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